

1 **MINUTES (draft)**
2 **Forensic Science Board Meeting**
3 **February 8, 2006 at 10:00 a.m.**
4 **DFS Central Laboratory, Classroom 1**
5

6 Board Members Present:
7

8 Mr. Steven Benjamin
9 Mr. Joseph Bono
10 Ms. Linda Carne (Designee for Ms. Linda Fairstein)
11 Mr. Leonard Cooke
12 Ms. Marla Decker (Designee for Mr. Robert McDonnell)
13 Colonel Steven Flaherty
14 Mr. Karl Hade
15 Sheriff F.W. Howard, Vice Chair
16 Ms. Demris Lee
17 Mr. Randolph Sengel, Chair
18

19 Board Members Absent:
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21 Dr. Marcella Fierro
22 Ms. Elizabeth Russell
23 Senator Kenneth Stolle
24

25 Department Staff Members Present:
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27 Ms. Wanda Adkins, Office Manager
28 Mr. Jeff Ban, DNA Section Chief
29 Dr. Dave Barron, Central Laboratory Director
30 Dr. Paul Ferrara, Director
31 Ms. Katya Herndon, Counsel
32 Ms. Linda Jackson, Forensic Scientist Supervisor, Controlled Substances Section
33 Mr. Ron Layne, Director of Administration and Finance
34 Mr. Pete Marone, Director of Technical Services
35 Mr. Dave Martin, Controlled Substances Section Chief
36 Mr. Charlie Oates, Legal Assistant
37 Mr. Steve Sigel, Deputy Director
38

39 Call to Order
40

41 The meeting was called to order by Mr. Sengel. Mr. Sengel introduced and welcomed
42 new Board Member Steve Benjamin. He also recognized Deputy Secretary of Public
43 Safety Jim Roberts, who was in attendance.
44

45 Adoption of Agenda
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47 Mr. Sengel asked if there were any objections to adopting the draft agenda. There were
48 no objections, and the agenda was adopted.

49
50 Adoption of Minutes

51
52 Mr. Sengel asked if there were any amendments to the draft minutes from the November
53 30, 2005 meeting. No amendments were offered, and the minutes were adopted
54 unanimously.

55
56 Chair's Report

57
58 Mr. Sengel reported that he had recently visited all four of the Department's regional
59 laboratories and met with examiners from the DNA and Drug sections to illicit
60 suggestions from their perspective as to how to improve the use of the resources that the
61 lab provides. In particular, Mr. Sengel was interested in possible revisions of protocol by
62 which material is submitted for DNA or drug analysis. Mr. Sengel focused on ways in
63 which the lab could better control submissions and prioritize cases statewide and sought
64 suggestions for a uniform method to prioritize cases for drug and DNA analysis.

65
66 Mr. Sengel independently synthesized his conversations into a series of suggested
67 procedures for the submission of DNA and drug cases. As a result of his discussions at
68 the regional laboratories, Mr. Sengel presented to the Board a proposed protocol for Case
69 Submission for Forensic DNA and Drug Examinations. Mr. Sengel asked the Board for
70 authorization to appoint a subcommittee of the Board to disseminate the proposed
71 protocol to user agencies, the public, or any interested parties as widely as possible in a
72 way that invites public comment for a period of 60 days. At the end of the 60 days the
73 subcommittee will review the comments received and recommend which, if any,
74 suggestions the Board should consider for implementation. The Department and all
75 agencies will be given opportunity for input. Colonel Flaherty moved that the Board
76 grant the Chair authority to appoint a subcommittee. The motion passed unanimously.
77 Mr. Benjamin commended the Chair on his work.

78
79 Mr. Sengel next addressed the Board's handling of requests for review of specific cases
80 that come from members of the bar, members of the public, or any other entity. He noted
81 that the Scientific Advisory Committee by statute is authorized to conduct review of
82 individual cases at the request of the Governor, the Director of the Department of
83 Forensic Science, or the Forensic Science Board. Accordingly, the Committee must
84 receive a request from the Governor, the Director or the Board in order to conduct a case
85 specific review. Mr. Sengel proposed a process whereby these requests would be
86 handled. Copies of the proposed process were distributed. All case specific requests will
87 be directed to the Chair of the Board. Upon receipt of the request, the Chair of the Board,
88 in consultation with the Chair of the Scientific Advisory Committee, shall review the
89 request to determine whether there is a basis to believe that the conduct alleged comes
90 within the scope of the review authority of the Scientific Advisory Committee. If the
91 Chair of the Board and the Chair of the Scientific Advisory Committee determine that the
92 request alleges conduct that is within the scope of the review authority of the Committee,

the Chair of the Board shall so notify the originator of the request, and the Director of the Department. The originator of the request and the Director of the Department, or his designee, shall be given the opportunity to appear at the next regularly scheduled meeting of the Board and present information to the Board relevant to the request. If the Chair of the Board and the Chair of the Scientific Advisory Committee determine that the request alleges conduct that is not within the scope of the review authority of the Committee, the Chair of the Board shall so notify the originator of the request and decline the request. Any such finding shall be reported to the Board at its next regularly scheduled meeting. Mr. Cooke moved that the Board adopt the procedure outlined by the Chair. The motion passed unanimously.

Ms. Decker asked that the Board Secretary label this and future protocols adopted by the Board and maintain them for reference purposes.

A letter received by the Scientific Advisory Committee Chair requesting a review of two specific cases was referred to the Board. Mr. Sengel indicated the letter would be addressed through the protocol approved by the Board to respond to such requests. Mr. Marone informed the Board that Judge Humphreys, who headed an independent review panel, had received a similar letter request. He noted that Judge Humphreys instructed his independent review team to look into these issues. Mr. Marone indicated that he believed the review was complete, but the report had not yet been issued.

Scientific Advisory Committee Report

Mr. Bono gave the Board an overview of its February 7, 2006 meeting. The Committee heard from Assistant Attorney General James Towey, who clarified for the Committee its responsibilities and what it is authorized to do under the statute. There were also presentations on projected enhancements to the Department's DNA program, new instrumentation, proposed gunshot residue report language, drug sampling and reporting, and random samples.

Mr. Bono stated that the Committee tabled the issue of the proposed gunshot residue report language until its August meeting so that the findings of the FBI's Gunshot Primer Residue Symposium can be finalized and published, and the Committee can look at the language the American Society for Testing Materials (ASTM) recommends.

The next Scientific Advisory Committee meeting is August 8, 2006.

Summary of Status of Review of Old Serology cases

Mr. Sengel asked Mr. Marone to update the Board on the Department's review of old serology cases. After the Governor ordered review of 10% of serology files from 1973 – 1988 (period while the practice of retaining swabs/cuttings in the files was being used by some Department examiners) resulted in DNA testing that exonerated two defendants, the Department began a full review of the remainder of the files from that time period (an estimated 600 boxes containing a total of some 160,000 files). The Department has three

139 part-time employees reviewing the files. They have gone through 60 boxes and have
140 found approximately 800 case files that contain evidence; however, just over half of the
141 800 have listed suspects. All files containing evidence are being entered into a database.
142 Files that contain evidence and have listed suspects will then be reviewed to cull those
143 containing all samples appropriate for testing (evidential and known victim/suspect
144 samples). Subsequently, those samples retained in files where it is determined the listed
145 suspect was convicted will be sent to a private laboratory for DNA testing. This testing
146 will be done on a rolling basis with files being sent once they have met all screening
147 criteria.

148
149 Mr. Benjamin commended the Department, stating that he thought it was a remarkable
150 project that reflects well on the laboratory nationally.

151 152 Budget Issues

153
154 Mr. Layne updated the Board on the agency's budget for FY2006 and the Department's
155 budget request for the 2006-2008 biennium. Information was provided showing that
156 between FY2004 and FY2008 the budget for DFS is projected to increase by
157 approximately \$9 million dollars or 38.97%. In terms of employment the number of
158 authorized full time employees is also expected to increase during this same period from
159 238 to 311, or 73 positions which equates to a 30.68% increase over four years. The
160 majority of these increases are related to expanding the capacity in the Department's
161 regional laboratories to address increasing case submissions from local police agencies
162 and commonwealth's attorneys for forensic laboratory analysis.

163
164 Between FY2004 and FY2006 the agency has experienced significant increases in costs
165 for utilities and other operation and maintenance expenses for its laboratory facilities.
166 During this period this category of expenditure has grown by approximately \$1,030,000
167 or 39.97%. This fiscal year (FY2006) this increase has partially been covered by shifting
168 funds from vacant positions which are not scheduled to be filled until after the beginning
169 of FY2007. The agency has met with staff at the Department of Planning and Budget and
170 has been advised additional funding will be provided to the agency in FY2006 to cover
171 the budget shortfall related to this issue. Additional funding will need to be provided in
172 the next biennium to allow the agency to pay for these expenses and also fill the positions
173 authorized for the Department.

174
175 Information regarding the agency's budget addenda request for the 2006-2008 biennium
176 was provided to the Board. The data reflected the 10 items requested in terms of funding
177 and FTE's and the amounts included for each of these items in the Governor's proposed
178 budget.

179
180 Mr. Benjamin expressed concern about money not in the Budget that had been requested
181 by the Department. He specifically mentioned the lack of money for equipment. Mr.
182 Sigel explained that the Department was instructed to seek other sources of funds for
183 equipment such as federal grants. Mr. Sigel noted that the Department has a grant

184 application he will be presenting for the Board's approval that would provide money for
185 equipment.

186
187 Mr. Benjamin asked how much longer the Department would be able to use the current
188 DNA technology. Dr. Ferrara explained that the Department could continue using the
189 current technology for five to ten years; however, the Department is pursuing new
190 technology that will be commercially available before then.

191
192 Mr. Benjamin asked if the Board should act on behalf of the Department in any specific
193 way to attempt to find more funding. The Board discussed the fact that Department's
194 Professional Achievement Plan for its forensic scientists was not funded. Ms. Decker
195 made a motion that the Board authorize the Chairman to address a letter to the
196 appropriate person endorsing funding for the Department's Professional Achievement
197 Plan for forensic scientists. The motion passed unanimously.

198 199 Long Range Plans and New Technologies

200
201 Mr. Marone gave a presentation on the Department's long range plans and new
202 technologies. Specifically, Mr. Marone stated that the Department has been involved in
203 the research of Dr. Richard Mathies' microfabricated capillary array electrophoresis. Mr.
204 Marone showed a film that gave an overview of the technology and its functions. He
205 explained that the new technology uses less time, sample, reagents and gel, which
206 correlates to lower cost. The new technology can do 96 samples in an hour, while the
207 current technology would take 2.5 times more time to do the same number of samples.
208 The new technology is also amenable to automation.

209
210 Mr. Benjamin moved that the Board ask the Scientific Advisory Committee to review,
211 study, and report to the Board at its May meeting on alternative DNA platforms,
212 comparing the advantages of the different platforms (current and future). The motion
213 passed unanimously.

214 215 Grants

216
217 Mr. Sigel presented two grant applications to the Board for approval. The first provides
218 funding to pay examiners for working overtime to reduce the backlog of criminal drug
219 cases, while the second provides funding for enhancement and replacement of
220 chromatography instrumentation and video analysis equipment. Ms. Decker made a
221 motion to authorize the Director to move forward with respect to the two grant
222 applications. The motion passed unanimously.

223
224 The Board agreed that, for future grants applications, the Department need only provide
225 the Board with copies of the project description and cover sheet. The full grant
226 application shall be made available for review upon request.

227
228 Dr. Ferrara acknowledged the assistance that the Department has received from the
229 Department of Criminal Justice Services with respect to these and other grants.

230
231 Drug Sampling and Reporting
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233 Mr. Bono summarized for the Board the Department's proposed revisions to its drug
234 sampling and reporting protocols. Mr. Bono stressed that the proposed protocol takes
235 away all ambiguity in reporting and that it exceeds what probably 99% of other
236 laboratories are doing across the country. He noted that the Committee unanimously
237 agreed that what is being proposed is excellent.
238

239 Colonel Flaherty moved that the Board approve the revised drug sampling and reporting
240 protocol. The motion passed unanimously.
241

242 Coordination with User Agencies
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244 Dr. Ferrara stressed the importance of strong working relationships between the
245 Department and its user agencies, particularly in light of the growth of the Department
246 and the submissions it is receiving. Communication between the Department's
247 examiners and prosecutors and law enforcement officers is essential for the Department
248 to be able to most effectively utilize its resources and determine priorities in light of the
249 growing workload. He asked for the Board's assistance in making sure the Department
250 and its issues are regularly included on the agenda for its user agency meetings.
251 Participating in these programs will allow the Department to update its user agencies on
252 issues and provide a direct mechanism for the user agencies to give feedback to the
253 Department.
254

255 Dr. Ferrara advised the Board that the Department would be adding a third Forensic
256 Academy Session each year beginning this summer.
257

258 Legislation
259

260 Ms. Herndon presented a summary of legislation affecting the Department that is before
261 the General Assembly.
262

263 Update on the Department's Facilities and Construction Projects
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265 Mr. Sigel advised the Board that the Department has excellent laboratory facilities;
266 however, it is outgrowing them. The Department is continuing to pursue construction of
267 a new Northern Laboratory in Prince William County under the PPEA. It is proceeding
268 with expanding its facilities in Eastern to add more lab space for firearms and DNA.
269 Mr. Sigel noted that the Governor's Budget Bill includes funds to lease space in the
270 future Biotech 8 building and move the Department's Administrative offices into that
271 building to free up laboratory space in the Central Laboratory.
272

273 Random Samples
274

275 Mr. Bono summarized the Committee's decision to support the Department's termination
276 of the random sampling protocol. Mr. Bono emphasized that the safeguards that random
277 sampling provided in DNA testing have been replaced by a higher threshold of
278 safeguards.

279
280 The Board agreed to ask the Scientific Advisory Committee to present to the Board at its
281 next meeting an overview of the decision to terminate the use of random samples. Mr.
282 Bono advised the Board, on behalf of the Committee, that it would make such a
283 presentation at the Board's May meeting.

284
285 Public Comment

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287 No member of the public elected to address the Board.

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289 Next Meeting

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291 Mr. Sengel reminded the Board that its next meeting is scheduled for May 10, 2006.

292
293 Motion to Adjourn

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295 The meeting adjourned at 12:40 p.m.